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5 UNITED STATES BANKRUPTCY COURT  
6 NORTHERN DISTRICT OF CALIFORNIA

7 In re

8 BODEGA BAY SUNSET PROPERTY, LLC,

No. 01-11600

9 Debtor(s).  
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11 BODEGA BAY SUNSET PROPERTY, LLC,

12 Plaintiff(s),

13 v.

A.P. No. 02-1241

14 BODEGA BAY CONCERNED CITIZENS,

15 Defendant(s).  
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17 Memorandum on Motion for Summary Judgment  
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19 Debtor Bodega Bay Sunset Property, LLC, owns a real estate development project in Bodega  
20 Bay, California. Prior to the debtor's Chapter 11 filing, defendant Bodega Bay Concerned Citizens  
21 ("BBCC") had filed a petition for writ of mandate in state court seeking to stop the development. The  
22 state court proceedings were stayed by the bankruptcy.

23 On July 2, 2002, the court confirmed the debtor's plan of reorganization which calls for the  
24 completion of the project. Nothing in the plan specifically addressed the rights of BBCC, which did not  
25 participate in the bankruptcy process although it had notice of the proceedings. After confirmation, a  
26 dispute arose as to whether confirmation barred BBCC from proceeding with its petition in state court.

1 The debtor commenced this adversary proceeding to resolve the issue.

2 BBCC seems to argue that a bankruptcy court cannot confirm a plan which bars petitions such as  
3 theirs, as such a plan would be “plainly inconsistent with the fair and equitable implementation of the  
4 California Subdivision Map Act.” The court doubts the soundness of this argument, as state interests  
5 must sometimes give way to federal bankruptcy considerations. Section 1123(a)(5) provides, in  
6 pertinent part: “[n]otwithstanding any otherwise applicable nonbankruptcy law, a plan shall...provide  
7 adequate means for [its] implementation . . .” (emphasis added). See *In re Pacific Gas and Electric*  
8 *Company*, 283 B.R. 41 (N.D.Cal. 2002). However, the court does not need to address this issue as the  
9 debtor did not follow the procedures necessary to preclude postpetition action by BBCC.

10 As a general proposition, an order confirming a Chapter 11 plan is the equivalent of a judgment,  
11 resolving all disputes between the parties which had been raised or could have been raised before entry  
12 of the order. *In re Kelly*, 199 B.R. 698, 702 (9<sup>th</sup> Cir. BAP 1996). The problem with the debtor’s  
13 attempt to invoke this principle is that BBCC was not a party to the bankruptcy proceedings. It had no  
14 claim against the debtor, as defined by § 101(5) of the Bankruptcy Code, and nothing in the plan  
15 addressed its right to proceed with its petition.

16 The court does not hold that a group such as BBCC can never be precluded from pursuing a  
17 petition for writ of mandate, but only that the debtor did not follow the necessary procedure by failing to  
18 address BBCC’s mandate petition with enough specificity to make BBCC a party to the bankruptcy  
19 proceedings. While a party need not be a creditor, its rights must be clearly and specifically dealt with  
20 in order for it to be fairly brought into the bankruptcy process and be bound by the confirmation order.  
21 The preclusive effect of a confirmation order cannot be invoked where someone has been “sandbagged.”  
22 *In re Associated Vintage Group, Inc.*, 283 B.R. 549, 565 (9<sup>th</sup> Cir. BAP 2002).

23 In this case, a provision of the plan stating something like “BBCC shall be permanently barred  
24 from seeking to stop the development” was necessary before BBCC was obligated to participate in the  
25 confirmation process or be bound by the confirmation order. The mere fact that the plan may be  
26 unfeasible if BBCC proceeds is not, in itself, sufficient to make BBCC a party to the bankruptcy.

1 Even if the debtor had included a specific injunction against BBCC in its plan, it probably would  
2 not be effective for lack of proper notice. Any time a plan provides for injunctive relief which is not  
3 already provided by the Code, the parties to be enjoined must be identified and given special notice.  
4 FRBP 3016(c), 2002(c)(3). It does not appear that such notice was given to BBCC.

5 For the foregoing reasons, the debtor's motion for summary judgment will be denied. It  
6 appearing that there is no issue of fact, judgment shall be entered in favor of BBCC declaring that it may  
7 proceed with its petition for writ of mandate notwithstanding confirmation of the debtor's plan. Counsel  
8 for BBCC shall submit an appropriate form of judgment.

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10 Dated: January 17, 2003

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12 Alan Jaroslovsky  
13 U.S. Bankruptcy Judge  
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